The proper analysis begins with the assumption that, under our system of federalism, state courts are free to invoke their own procedure when resolving disputes based on federal statutes: "[F]ederal law takes the state courts as it finds them." *Howlett By and Through Howlett v. Rose*, 496 U.S. 356, 372 (1990). Moreover, the adequate-state-ground doctrine "accords respect to state courts as decision-makers by honoring their modes of procedure." *Id.* at 369 n.16.

Turning to the plain language of the Jones Act itself, seamen are given the right to sue for negligence, and to elect between actions at law and actions in admiralty (in courts where such distinctions exist). Petitioner asserts that the statute gives him an additional election – to choose between trial by jury and trial by judge. The Illinois Supreme Court properly concluded otherwise:

> We believe that anyone well versed in statutory construction, or even English grammar, would find the plain language of that sentence clearly states that the "election" to be made by the seaman pertains to his choice to maintain an action "at law," and not his election of a "right of trial by jury." Under the principle of statutory construction known as the last antecedent doctrine, relative or qualifying words or phrases in a statute serve only to modify words or phrases which are immediately preceding and do not modify those which are more remote.

Bowman, 217 Ill.2d 75, 83, 838 N.E.2d 949, 953 (2005) (Petitioner's Appx. at 7).

The Illinois Supreme Court analysis relied on various rules of statutory construction, including the "last antecedent doctrine" mentioned above. Under that doctrine, the

phrase "trial by jury" is presumed to modify the more proximate words "at law," thus entirely defeating Petitioner's arguments that "trial by jury" is modified by the remote word "election." As this Court previously explained, the "grammatical 'rule of the last antecedent,'" declares that "a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows. . . ." *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003). Petitioner has yet to provide any rationale for discarding this sensible doctrine in favor of an unfair and unprecedented interpretation leaving only one side in a lawsuit with the right to trial by jury. The Illinois Supreme Court correctly concluded that the Jones Act gives seamen an election to sue at law, but not to dictate the procedure in such a suit: "Therefore, the rules of statutory construction clearly establish that the 'election' referred to in the Jones Act is *not* the seaman's election of a trial by jury, but his election to proceed 'at law' rather than in admiralty." *Bowman*, 217 Ill.2d at 85, 838 N.E.2d at 954 (Petitioner's Appx. at 9) (emphasis in original).

This Court's interpretation of the Jones Act shortly after Congress passed that statute bolsters the conclusion reached by the Illinois Supreme Court in this case. In *Panama Railroad v. Johnson*, 264 U.S. 375 (1924), this Court read the phrase at issue in the same way the Illinois Supreme Court did: "[The Jones Act] says 'may maintain' an action at law 'with the right of trial by jury,' the import of which is that the injured seaman is permitted, but not required, to proceed on the common-law side of the court *with a trial by jury as an incident*." *Panama Railroad*, 264 U.S. at 390-91 (emphasis added). Even more emphatically, *Panama Railroad* explained the ramifications of electing between an action in admiralty and an action at law: "In

this view the statute leaves the injured seaman free . . . to assert his right of action under the new rules on the admiralty side of the court. On that side the issues will be tried by the court, but *if he sues on the common-law side there will be a right of trial by jury.*" *Id.* at 391 (emphasis added). Petitioner's arguments here are flatly contrary to this Court's statement that the Jones Act allows seamen to elect between a court of admiralty and a court of law, the former of which carries no trial by jury, and the latter of which carries with it the usual jury trial rights.

Petitioner's interpretation of the Jones Act is at odds with that of many other authorities as well. For example, the Louisiana legislature adopted a short-lived statute in 1988 giving only seamen the right to determine whether their Jones Act suits in Louisiana state courts would be tried to a judge or a jury.[1] Obviously, if the right to trial by judge or jury was already an integral part of the Jones Act as Petitioner argues here, then Louisiana's statute would have been entirely unnecessary.

Louisiana's courts, like its legislature, have concluded that the Jones Act gives seamen no right to deprive defendants of their right to trial by jury in state court without a state statute to that effect. As discussed earlier, *Hahn v. Nabors Offshore Corp.*, 820 So. 2d 1283, 1285 (La. Ct. App. 2002), understood that jury trial rights in state court differ from those that arise in federal court. *Hahn* also understood that, in state court, the Jones Act does not dictate to

[1] Illinois has no similar legislation restricting the right to demand trial by jury to the plaintiff only. Louisiana has since repealed its own statute giving only plaintiffs in injury claims the right to trial by jury, and now both parties in that State are entitled to demand trial by jury. *See Hahn v. Nabors Offshore Corp.*, 820 So. 2d 1283 (La. Ct. App. 2002).

the states whether a litigant is entitled to trial by jury: "Unless and until a jury trial is specifically forbidden in certain cases, a defendant will be given the right to choose a jury, regardless of the choice made by the plaintiff." *Smith v. Cliff's Drilling Co.*, 562 So. 2d 1030, 1031 (La. Ct. App. 1990). *See also, Hahn v. Nabors Offshore Corp.*, 820 So. 2d 1283, 1285 (La. Ct. App. 2002) ("[B]ecause the right to trial by jury in admiralty/general maritime claims is no longer limited by [state statute], it is recognized in the instant case. As stated in *Parker*, 599 So. 2d at 301, 'it is within the province of the states to establish their own rules for the availability of jury trials.'")

The Illinois Fourth District Court of Appeals likewise rejected arguments identical to those asserted by Petitioner here, and reached the same conclusion reached by the Illinois Supreme Court in this case: "Based on our construction of the statute, we conclude the Jones Act does not limit the right to trial by jury to the plaintiff only. Procedural rules in a Jones Act claim are governed by the forum in which the claim is filed." *Hutton v. Consol. Grain & Barge Co.*, 341 Ill. App. 3d 401, 407, 795 N.E.2d 303, 308 (2003). *Hutton* interpreted the Jones Act as giving seamen only the election between suing at law where the right of trial exists, or suing in admiralty where no party has a right to a jury trial: "The Jones Act does not explicitly state only the plaintiff may elect a trial by jury. This would be true if the 'election' referred to in the statute was the election of trial by jury. Here, the phrase 'at his election' modifies 'may . . . maintain an action for damages at law.'" *Hutton*, 341 Ill. App. 3d at 406, 795 N.E.2d at 307.

The Illinois Supreme Court decision in this case was unanimous. Every judge on that Court concluded that a seaman may elect to file an action at law, but cannot elect

between a bench trial and a jury trial in state court. Only a strained and contorted reading of the Jones Act could lead to the unfair and unprecedented result that Petitioner urges here, and which the Illinois Supreme Court rightly rejected.

IV. This is the wrong case to correct misinterpretations of the Jones Act.

The Illinois Supreme Court ruling involved state procedure, and that Court correctly decided the issue before it. The federal issue in *Rachel* and *Craig* was wrongly decided by those courts. However, this case arising from state court is not the case to correct those federal court errors.

Sixty-six years after the Jones Act had been enacted, the Fifth Circuit Court of Appeals in *Rachal v. Ingram Corp.*, 795 F.2d 1210 (5th Cir. 1986), stated for the first time that a seaman could amend his complaint to change from an action at law with a jury demand to one invoking the court's admiralty jurisdiction which would be tried without a jury, despite the defendant's demand for trial by jury while the case was pending on the "law" side of the court. Although Federal Rule of Civil Procedure 15 allowing amendments to complaints suggested that leave to amend a pleading to invoke admiralty jurisdiction should be freely given, Federal Rule of Civil Procedure 39 suggested that a jury demand cannot be withdrawn without consent of the opposing party, unless the court finds that a right to trial by jury does not exist. In sorting out the issue, the Fifth Circuit opted to allow the seaman to amend the "at law" designation, dispensing with Rule 39

by concluding that the seaman alone can choose whether the case is before a judge or jury, and the defendant held no jury trial right. *Rachal*, 795 F.2d at 1217.[2] Although it is true that, in a sense, seamen can obtain non-jury trials by filing suit in federal court and invoking admiralty jurisdiction, the Court in *Rachel* was the first to hold that only the plaintiff can demand a jury trial in an action at law in federal court.

Thereafter, the Ninth Circuit Court of Appeals in *Craig v. Atlantic Richfield*, 19 F.3d 472 (9th Cir. 1994), followed *Rachal* without any independent analysis and concluded that seamen have a unilateral right, independent of the right to decide the forum, to decide whether the case will be tried to a judge or jury.

These recent judicial misinterpretations of the Jones Act have spawned highly critical law review articles, particularly from two law professors at the University of Texas, Professors David Robertson and Michael Sturley. In their first article, these scholars characterized the holding in *Rachel* as "serious error." David W. Robertson & Michael F. Sturley, *The Right to a Jury Trial in Jones Act Cases: Choosing the Forum Versus Choosing the Procedure*,

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[2] The Court could not simply conclude that the plaintiff should be allowed to freely amend his "at law" designation under Federal Rule of Civil Procedure 15, because the Fifth Circuit had fourteen years earlier in a Jones Act case in federal court on diversity grounds concluded that an "at law" designation creates in the defendant a Seventh Amendment right to trial by jury. Accordingly, the Fifth Circuit created the odd distinction between the right to trial by jury in Jones Act diversity cases and the right to trial by jury in Jones Act federal statute cases. For a more thorough critique of the *Rachal* case, *see* David W. Robertson & Michael F. Sturley, *The Right to a Jury Trial in Jones Act Cases: Choosing the Forum Versus Choosing the Procedure*, 30 J. Mar. L. & Com. 649, 661-63 (Oct. 1999).

30 Mar. L. & Com. 649, 663 (Oct. 1999). "The most serious problem with the *Rachel* mistake is the denial of Jones Act defendants' constitutional rights." *Id.* at 666. The premise for the *Rachel* ruling is "simply wrong." *Id.* at 670. *Rachel* distorts precedent and depends on "strained readings of the Jones Act and Rules 38(a) and 39(a)." *Id.* at 671.

In a second law review article, these scholars addressed the ill-conceived statements in *Rachel*:

> It is nothing short of astonishing to suggest that – in a forum in which jury trials are generally available at the request of either party – one party would have a unilateral right to choose between a jury trail and a bench trial. Such a right would be unprecedented in law, offensive to the Seventh Amendment, and contrary to basic notions of even-handed procedural fairness.
>
> Fortunately neither Congress nor the Supreme Court has ever endorsed this astonishing result, and thus the mistake first made by the Fifth Circuit in *Rachel*, and perpetuated by zealous advocates such as Mr. Dripps [Petitioner's counsel in this case], can still be corrected without too much difficulty.

David W. Robertson & Michael F. Sturley, *Understanding Panama R.R. v. Johnson: The Supreme Court's Interpretation of the Seaman's Elections Under the Jones Act*, 14 U.S.F. Mar. L.J. 229, 268 (2001-02).[3]

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[3] Professors Robertson and Sturley also agree with the conclusion reached by the Illinois Supreme Court here that, when filed in state court, state law determines the parties' respective rights to trial by jury in Jones Act cases: "And if the plaintiff brings her action in a state court, where the Seventh Amendment does not apply, the parties' jury

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While *Rachel* and *Craig* may need correction, this is not the case to correct them. This case involves state civil procedure. Comments by this Court here would not resolve questions involving federal procedure, and the holdings in *Rachel* and *Craig* would be left uncured by any ruling in this state procedure case. To correct the distorted holdings in those federal procedure cases, this Court should await an appeal in a federal court case, and issue a ruling rectifying that problem directly.

CONCLUSION

Rulings in Illinois depriving defendants of trial by jury were an egregious departure from fundamental fairness and any common sense reading of the Jones Act. The Illinois Supreme Court rightly demanded that the circuit courts of its state distribute justice fairly, without torturing the language of a statute to reach a result at odds with that state's and this nation's traditional notions

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trial rights should be determined by the procedural rules of that forum." David W. Robertson & Michael F. Sturley, *Understanding Panama R.R. v. Johnson: The Supreme Court's Interpretation of the Seaman's Elections Under the Jones Act*, 14 U.S.F. Mar. L.J. 229, 261 (2001-02) (footnote omitted). "The courts in California and Illinois that have read the *Rachal* analysis as endowing the Jones Act plaintiff with an indefeasible bench-trial option that preempts normal state-law jury-trial guarantees have committed the worst errors." David W. Robertson & Michael F. Sturley, *The Right to a Jury Trial in Jones Act Cases: Choosing the Forum Versus Choosing the Procedure*, 30 Mar. L. & Com. 649, 673 (1999). "[O]nce the Jones Act plaintiff has made her forum choice, the Jones Act defendant has the same rights as any other defendant in that forum. If defendants in the chosen forum normally have a right to a jury, then so does the Jones Act defendant." Robertson & Sturley, 30 Mar. L. & Com. at 673.

of fair play and justice. This Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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